



End of 2011 Plan Year

Pension Analyst

# Compliance Bulletin



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## Many defined contribution plan sponsors must annually “notice” their participants

Sponsors of defined contribution plans with certain features are required to provide annual notices to participants. Generally, these notices are in addition to an initial notice provided on or before an employee’s eligibility date for the feature. As the 2011 plan year is nearing its end, it is important to look ahead at the notices that may need to be provided before the start of the 2012 plan year. Previously, Prudential Retirement has published several *Pension Analysts* that describe the *initial* notice requirements for [Traditional ADP/ACP Safe Harbors](#), [QACAs and EACAs](#) and [QDIAs](#). This publication provides a summary of the *annual* notice requirements for those notices, including timing, recipients, contents, and method of delivery.

### Notices, notices, notices

The **Traditional ADP/ACP Safe Harbor Notice** is required for 401(k) and 403(b) plans that are designed to satisfy the original Small Business Job Protection Act of 1996 (SBJPA) ADP/ACP Safe Harbor design rules, providing either a 3% employer nonelective contribution or a specific schedule of employer matching contributions, which are subject to 100% immediate vesting and specific withdrawal restrictions.

The **Traditional ADP/ACP Safe Harbor Contingent Notice** is required when a plan sponsor wants to preserve the ability to adopt the 3% employer nonelective contribution Safe Harbor design before the end of the plan year.

The **Traditional ADP/ACP Safe Harbor Follow-Up Notice** is required when a plan sponsor has provided the Contingent Notice and decides to adopt that Safe Harbor design for the plan year.

The **QACA (Qualified Automatic Contribution Arrangement) Notice** is required for 401(k) and 403(b) plans that are designed to satisfy the Pension Protection Act of 2006 (PPA) automatic enrollment and escalation safe harbor plan design, providing either a 3% employer nonelective contribution or a specific schedule of employer matching contributions, which are subject to 100% vesting upon completion of two years of service and specific withdrawal restrictions.

The **QACA Contingent Notice** is required when a plan sponsor wants to preserve the ability to adopt the 3% employer nonelective contribution safe harbor design before the end of the plan year.

The **QACA Follow-Up Notice** is required when a plan sponsor has provided the QACA Contingent Notice and decides to adopt the QACA safe harbor design for the plan year.

The **EACA (Eligible Automatic Contribution Arrangement) Notice** is required for 401(k) and 403(b) plans that are designed to permit penalty-free distributions of “accidental” automatic deferrals and/or to provide a six-month period to distribute excess contributions and excess aggregate contributions without imposition of the 10% excise tax.

The **ACA (Automatic Contribution Arrangement) Notice** is required for 401(k) and 403(b) plans that want to guarantee ERISA preemption of state wage withholding laws that prohibit involuntary wage withholding.

The **QDIA (Qualified Default Investment Alternative) Notice** is required for participant-directed defined contribution plans, including 403(b) plans, that intend to comply with the Department of Labor’s (DOL) safe harbor rules for default investments.

Some plan designs may require multiple notices and some of these notices may be combined or packaged together in one mailing. The following chart summarizes the requirements that apply to each of these notices.

Timing	Recipients	Contents	Delivery methods
<b>Traditional ADP/ACP Safe Harbor Notice QACA (Qualified Automatic Contribution Arrangement) Notice</b>			
<p>Within a “reasonable period” before the first day of the plan year.</p> <p>Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.</p>	<p>Eligible employees.</p>	<p>Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee.</p> <p>For QACA Notice, required contents include those items required under the Traditional ADP/ACP Safe Harbor design <a href="#">plus additional items.</a></p> <p><a href="#">SPD may be cross-referenced for some, but not all, required items.</a></p> <p>May be combined with:</p> <ul style="list-style-type: none"> <li>• <a href="#">EACA Notice</a></li> <li>• <a href="#">ACA Notice</a></li> <li>• <a href="#">QDIA Notice.</a></li> </ul>	<p>In writing or electronically, in accordance with <a href="#">IRS electronic media rules.</a></p> <p>A paper version may not be posted on a bulletin board or left in a central work location.</p>

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**Traditional ADP/ACP Safe Harbor Contingent Notice  
QACA (Qualified Automatic Contribution Arrangement) Contingent Notice**

<p>Within a “reasonable period” before the first day of the plan year.</p> <p>Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.</p>	<p>Eligible employees.</p>	<p>Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee.</p> <p>For QACA Notice, required contents include those items required under the Traditional ADP/ACP Safe Harbor design <a href="#">plus additional items.</a></p> <p><a href="#">SPD may be cross-referenced for some, but not all, required items.</a></p> <p>May be combined with:</p> <ul style="list-style-type: none"> <li>• <a href="#">EACA Notice</a></li> <li>• <a href="#">ACA Notice</a></li> <li>• <a href="#">QDIA Notice.</a></li> </ul>	<p>In writing or electronically, in accordance with <a href="#">IRS electronic media rules.</a></p> <p>A paper version may not be posted on a bulletin board or left in a central work location.</p>
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Timing	Recipients	Contents	Delivery methods
<b>Traditional ADP/ACP Safe Harbor Follow-Up Notice                      QACA (Qualified Automatic Contribution Arrangement) Follow-Up Notice</b>			
At least 30 days before the last day of the plan year in which the safe harbor is effective.	Eligible employees.	Must state that safe harbor nonelective contributions will be made for the plan year.  May be combined with the <a href="#">standard</a> or <a href="#">Contingent Notice</a> for the next plan year.  May also be combined with <a href="#">QDIA Notice</a> .	In writing or electronically, in accordance with <a href="#">IRS electronic media rules</a> .  A paper version may not be posted on a bulletin board or left in a central work location.
<b>EACA (Eligible Automatic Contribution Arrangement) Notice</b>			
Within a “reasonable period” before the first day of the plan year.  Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.	Eligible employees, unless the plan provides otherwise.	Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee.  <a href="#">Content requirements</a> cannot be satisfied by cross-referencing SPDs.  May be combined with: <ul style="list-style-type: none"> <li>• <a href="#">QACA Notice</a></li> <li>• <a href="#">ACA Notice</a></li> <li>• <a href="#">QDIA Notice</a>.</li> </ul>	In writing or electronically, in accordance with <a href="#">IRS electronic media rules</a> .  A paper version may not be posted on a bulletin board or left in a central work location.
<b>ACA (Automatic Contribution Arrangement) Notice</b>			
Within a “reasonable period” of at least 30 days before the first day of the plan year.	Any participant who did not make an affirmative election at the plan’s current default deferral rate.	<a href="#">Required contents vary</a> , depending on whether automatic contributions are invested in a QDIA, or not. In either situation, the notice must be written in a manner calculated to be understood by the average plan participant.  May be combined with: <ul style="list-style-type: none"> <li>• <a href="#">QACA Notice</a></li> <li>• <a href="#">EACA Notice</a>.</li> </ul>	In writing or electronically, in accordance with either <a href="#">DOL electronic media rules</a> or <a href="#">IRS electronic media rules</a> .  DOL permits certain notices to be provided under IRS electronic media rules. It may be possible (depending on the nature of an employer’s workforce) to provide notices electronically without advance affirmative consent of affected participants and beneficiaries. Any plan sponsor who is interested in such approach should discuss it with its own legal counsel with particular focus on unclear requirements of the IRS rule.  A paper version may not be posted on a bulletin board or left in a central work location.

Timing	Recipients	Contents	Delivery methods
<p><b>QDIA (Qualified Default Investment Alternative) Notice</b></p>			
<p>At least 30 days before the first day of the plan year.</p>	<p>All participants and beneficiaries who may have assets defaulted in a QDIA.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant.</p> <p>Fee and expense information may be provided in a separate document furnished simultaneously with the QDIA Notice.</p> <p>May be combined with:</p> <ul style="list-style-type: none"> <li>• <a href="#">Traditional ADP/ ACP Safe Harbor Notice</a></li> <li>• <a href="#">Traditional ADP/ ACP Safe Harbor Contingent Notice</a></li> <li>• <a href="#">QACA Notice</a></li> <li>• <a href="#">QACA Contingent Notice</a></li> <li>• <a href="#">EACA Notice</a>.</li> </ul>	<p>May be provided in writing or electronically, in accordance with either <a href="#">DOL electronic media rules</a> or <a href="#">IRS electronic media rules</a>.</p> <p>DOL permits certain notices to be provided under IRS electronic media rules. It may be possible (depending on the nature of an employer's workforce) to provide notices electronically without advance affirmative consent of affected participants and beneficiaries. Any plan sponsor who is interested in such approach should discuss it with its own legal counsel with particular focus on unclear requirements of the IRS rule.</p> <p>May be distributed with other materials being furnished to participants and beneficiaries, but as a separate stand-alone notice.</p> <p>A paper version may not be posted on a bulletin board or left in a central work location.</p> <p>May not be included in an SPD or an SMM.</p>

**Compliance Bulletin by Prudential Retirement**

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